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IN THE SUPREME COURT OF THE STATE OF IDAHO Docket No. 29319

GARY A. WHITE,) Boise, May, 2004 Term
Plaintiff-Appellant-Cross) 2004 Opinion No. 84
Respondent,) Filed: July 7, 2004
V.) Frederick C. Lyon
DALE L. MOCK and KAREN MOCK, husband and wife,)
Defendants-Respondents-Cross Appellants.)))

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Kathryn A. Sticklen, District Judge.

Judgment in favor of the Mocks on fraud and misrepresentation claims, and in favor of White on statutory claims, <u>affirmed</u>. Order denying j.n.o.v., <u>affirmed in part</u>, but <u>reversed</u> as to claim based on Idaho Consumer Protection Act. Order granting limited new trial, <u>affirmed</u>.

Neal & Uhl, PLLC, Boise, for appellant. Gary L. Neal argued.

Stoppello & Kiser, Boise, for respondents. Frank W. Stoppello argued.

In a unanimous opinion the Idaho Supreme Court affirmed the decision of the district court to deny stigma damages for water intrusion that led to mold growth. The court held that the statute for psychologically impacted property did not apply to this case. Furthermore, the remedy of rescission was not available because the purchaser had begun remodeling and thus making it impossible to return the property to the *status quo*.

The Court affirmed the district court's denial to allow the plaintiff to call the defendants' expert because the plaintiff did not name the expert in discovery and that a general reservation of rights to call the other party's witnesses was insufficient.

The Idaho Supreme Court held that under the Consumer Protection Act if it is found that a seller has engaged in an act or practice which is misleading, false or

deceptive to the buyer then damages shall be awarded to the buyer in an amount of at least one thousand dollars. Based upon the jury's findings that the seller did violate the Consumer Protection Act an award of damages of at least one thousand dollars should have been awarded to the plaintiff. The district court's ruling that these defendants as individuals selling investment real property were subject to the Consumer Protection Act was affirmed. Having found that the defendants were subject to the Consumer Protection Act and that damages should have been awarded to the plaintiff the Idaho Supreme Court affirmed the district court's decision to grant a new trial on the limited issue of damages.